



W.P.No.30274 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.30274 of 2023

K.Kalaimani

...Petitioner

Vs.

1. The Tamil Nadu Civil Supplies Corporation
Rep. By its Managing Director
10, Thambuswamy Road
Chennai – 10

2. The Tamil Nadu Civil Supplies Corporation
Rep. By its Senior Regional Manager
Thanjavur Region
Thanjavur

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings passed in Na.Ka.No.A9/16684/2010 dated 03.08.2023 on the file of the second respondent herein and quash the same and consequently direct the respondents to release the accumulated earned leave and unearned leave on private affairs of Rs.3,97,318/- standing to the credit of the petitioner on the date of superannuation viz., 31.10.2010.



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For Petitioner : Mr.S.Venkataraman

For Respondents : Mr.C.Selvaraj
Standing Counsel

ORDER

The petitioner herein, had superannuated from service on 31.10.2010 after the respondent had permitted him to retire. On his retirement, benefits were disbursed to the petitioner and he is now receiving his monthly pension. After about 13 years from the date on which the petitioner was permitted to retire from service, the present impugned notice has been sent directing the petitioner to pay a sum of Rs.2,32,993/- stating that this amount is due from the petitioner. Challenging the same, the present writ petition has been filed.

2. Admittedly, no prior notice has been issued before the present notice dated 03.08.2023. Though this letter is termed to be a notice, effectively it is an order directing the petitioner to pay a sum of Rs.2,32,993/- with a rider that further proceedings would be taken against him if he fails to repay the aforesaid amount.

3. It is a settled proposition of law that whenever any adverse order is issued to a Government employee or a pensioner, the same should be



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done only in accordance with the procedure contemplated either under the service regulations or under the Tamil Nadu Pension Rules. Moreover, such proceedings can be initiated only by giving a prior opportunity to the concerned person and after consideration of his objections to any contemplated action, can an order of recovery be made. In the case of *State of Punjab and others vs Rafiq Masih (White Washter) and others* reported in *2015 (4) SCC 334*, Hon'ble Supreme Court had held that a recovery of any excess payment made owing to the mistake of the Department over a period of 5 years before the date of recovery, more particularly from a pensioner, is impermissible in law.

4. The decision of the Hon'ble Supreme Court has been followed in various other decisions of this Court and whenever a recovery is sought for from a pensioner for any excess payment made prior to 5 years from the date of such contemplated recovery, such proceedings has been struck down by this Court.

5. The only objection raised by the learned counsel for the respondent is that pending amounts were pointed out in the audit objections even when the petitioner was in service after giving him an opportunity and therefore, the impugned notice cannot be found fault



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with. I am not in agreement with such a submission.

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6. The respondents having permitted the petitioner to retire from service, will not now be empowered to make any such recovery unless and until they followed procedure contemplated under the Tamil Nadu Pension Rules for such recovery. Above all, there is absolutely no explanation as to why the respondents have chosen to wait for 13 long years after the alleged audit objections or the petitioner's superannuation for proposing such a recovery. On this ground also, the impugned notice is liable to be interfered with.

7. In the light of the above findings, the writ petition is allowed and the impugned order dated 03.08.2023 is set aside. If any recovery has already been made, the respondent shall forthwith refund the amount to the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs.

22.11.2023

Index:Yes
Speaking order
gpa



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To

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1. The Managing Director
Tamil Nadu Civil Supplies Corporation
10, Thambuswamy Road
Chennai – 10
2. The Senior Regional Manager
Tamil Nadu Civil Supplies Corporation
Thanjavur Region
Thanjavur



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M.S.RAMESH,J.

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